

RECEIPT NUMBER

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GERALD E. HAWKINS, SALVATORE CIATTI,  
and GERALD P. JAKUBIK, on behalf of them  
and a similarly situated class,

Plaintiffs,

v.

HOWDEN BUFFALO, INC.

Defendant.

JUDGE : Hood, Denise Page  
DECK : S. Division Civil Deck  
DATE : 11/21/2005 @ 16:20:43  
CASE NUMBER : 2:05CV74437  
CMP GERALD E HAWKINS V HOWDEN  
BUFFALO (AWT)

11/21/05 JUDGE SCHUER

**COMPLAINT AND JURY DEMAND**

Plaintiffs Gerald E. Hawkins, Salvatore Ciatti and Gerald P. Jakubik (the "Class Representatives") on behalf of themselves and all similarly situated persons in the proposed class described in this Complaint, by their attorneys, Klimist, McKnight, Sale, McClow & Canzano, P.C., file this Complaint against Defendant Howden Buffalo, Inc. as follows:

1. This action is brought as a class action by the Class Representatives on behalf of themselves and a similarly situated class of retirees pursuant to Rule 23(a) and 23(b)(1) and (2) of the Federal Rules of Civil Procedure.
2. Count I is brought under §301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. §185, and seeks damages for breach of a collective bargaining agreement as well as declaratory and injunctive relief.
3. Count II is brought under §502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132(a)(1)(B), and seeks to recover benefits due and to clarify rights to benefits due under an employee welfare benefit plan.

### JURISDICTION AND VENUE

4. This Court has jurisdiction over Count I under §301 of the LMRA, 29 U.S.C §185. This Court has jurisdiction over Count II under §502(a)(1)(B), §502(a)(3), §502(e)(1), and §502(f) of ERISA, 29 U.S.C. §1132(a)(1)(B), §1132(a)(3), §1132(e)(1), §1132(f), and applicable federal common law. Venue in this judicial district is proper under §301 of LMRA, 29 U.S.C. §185, and §502(e)(2) and §502(f) of ERISA, 29 U.S.C. §1132(e)(2) and §1132(f).

### PARTIES

5. Defendant Howden Buffalo, Inc. (hereinafter "Defendant") is a Delaware corporation that operates a facility in Dearborn, Michigan.

6. Upon information and belief, Defendant is the successor to American Standard, Inc. and American Davidson, Inc. who were parties to a series of collective bargaining agreements with the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (hereinafter "UAW") and UAW Local 254.

7. Class Representative Gerald E. Hawkins resides at 29562 Oakley, Livonia, Michigan 48154. He retired from employment with Defendant's predecessors and, as an employee, was represented in collective bargaining by the UAW as part of the research, drafting and plant clerical bargaining unit.

8. Class Representative Salvatore Ciatti resides at 6836 Asbury Park, Detroit, Michigan 48228. He retired from employment with Defendant's predecessors and, as an employee, was represented in collective bargaining by the UAW as part of the factory bargaining unit.

9. Class Representative Gerald P. Jakubik resides at 12833 Ward, Southgate, Michigan 48195. He retired from employment with Defendant's predecessors and, as an employee, was represented in collective bargaining by the UAW as part of the factory bargaining unit.

**CLASS ACTION ALLEGATIONS**

10. The Class Representatives bring this class action on behalf of themselves and other similarly situated former employees who retired from Defendant's predecessors and who were represented by the UAW in collective bargaining in the factory, drafting, research and clerical bargaining units ("Class").

11. The exact number of members of the Class is not presently known, but is so numerous that joinder of individual members in this action is impracticable.

12. There are common questions of law and fact in the action that relate to and affect the rights of each member of the Class. The relief sought is common to the entire Class, as set forth below in Counts I and II of this Complaint.

13. The claims of the Class Representatives are typical of the claims of the Class in that the Class Representatives claim that Defendant is obligated to provide all members of the Class, including the Class Representatives, with the same collectively bargained retiree health care benefits. There is no conflict between any Class Representative and other members of the Class with respect to this action.

14. The Class Representatives are the representative parties for the Class, and are able to and will fairly and adequately protect the interests of the Class.

15. The attorneys for the Class Representatives are experienced and capable in the field of labor law and ERISA and have successfully prosecuted numerous class actions of a similar nature.

16. Defendant has acted on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding injunctive relief appropriate with respect to the Class as a whole.

17. This action is properly maintained as a class action in that the prosecution of separate actions by individual members would create a risk of adjudication with respect to individual members which would establish incompatible standards of conduct for the Defendant.

18. This action is properly maintained as a class action in that the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

**COUNT I**  
**VIOLATION OF COLLECTIVE BARGAINING AGREEMENT**

19. Plaintiffs re-allege and incorporate by reference the above paragraphs as though fully set forth in this Count I.

20. The UAW is a labor organization as defined in §2(5) of the National Labor Relations Act, 29 U.S.C. §152(5), with its headquarters and principal office within this judicial district. Prior to their retirement, the UAW represented the Class Representatives and other members of the Class in the negotiation of collective bargaining agreements.

21. The UAW and Defendant's predecessors in interest, American Standard and American Davidson, negotiated a series of collective bargaining agreements that obligated Defendant to provide vested lifetime retiree health care benefits for the members of the Class.

22. The relevant portions of the collective bargaining agreements for the factory and the drafting, research and plant clerical bargaining units provided that effective August 1, 1969, any employee who retired and received benefits under the pension plan would receive health care benefits during the life of the pensioner without cost to the pensioner.

23. In about August 2005, Defendant informed the Class Representatives and the Class members that it would terminate their health care benefits effective January 1, 2006.

24. Defendant's threat to terminate the health care benefits is a breach of Defendant's contractual obligation to provide vested lifetime retiree health care benefits to the Class.

25. The parties to the applicable collective bargaining agreements understood at the time they entered into those agreements that the retiree health care provisions of the agreements dealt with matters of obvious mental concern and solicitude for the retirees, their spouses, and their dependents.

26. Defendant's breach of their contractual obligations as set forth in this Count has caused the Class Representatives and similarly situated Class members monetary damages and great mental anguish and distress.

## **COUNT II** **VIOLATION OF ERISA PLAN**

27. Plaintiffs re-allege and incorporate by reference the above paragraphs of this Complaint as though set forth in this Count II.

28. Defendant was at all relevant times the relevant "employer" within the meaning of §3(5) of ERISA, 29 U.S.C. §1002(5).

29. The collectively bargained agreements described in paragraphs 21 and 22 of this Complaint under which retiree health care benefits are provided to the Class Representatives and Class members is an "employee welfare benefit plan" within the meaning of §3(3), of ERISA 29 U.S.C. §1002(1).

30. Defendant is or was at relevant times the "plan sponsor" and/or "administrator" of the employee welfare benefit plan, within the meaning of §3(16)(A)-(B) of ERISA, 29 U.S.C. §1002(16)(A)-(B).

31. The Class Representatives and Class members are "participants" in the employee welfare benefit plan, within the meaning of §3(7) of ERISA, 29 U.S.C. §1002(7).

32. The terms of the employee welfare benefit plan requires the Defendant to provide vested lifetime retiree health care benefits to the Class Representatives and the Class members.

33. Defendant's threatened termination of the retiree health care benefits effective January 1, 2006 of the Class Representatives and the Class members is a breach of its obligations under the employee welfare benefit plan.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment against Defendant under ERISA and the LMRA to provide vested lifetime retiree health care benefits to the Class Representatives and Class members as set forth in the applicable collective bargaining agreements.

B. Enter preliminary and permanent injunctive relief requiring the Defendant to maintain the level of retiree health care benefits in effect as of December 2005, as required by the terms of the applicable collective bargaining agreements.

C. Order the Defendant to pay damages, plus interest, to the Class Representatives and Class members for any losses incurred as a result of its modification or termination of the retiree health care benefits.

D. Order the Defendant to pay damages for mental distress and anguish suffered by the Class Representatives and Class members resulting from Defendant's breach of its contractual obligation to provide health care benefits to the Class Representatives and Class members.

- E. Award Plaintiffs attorney fees, punitive damages, and costs incurred of this action.
- F. Grant such further relief as may be deemed necessary and proper.

**JURY DEMAND**

Plaintiffs request a jury trial of all issues so triable.

Respectfully submitted,

KLIMIST, McKNIGHT, SALE  
McCLOW & CANZANO, P.C.



ROGER MCCLOW (P27170)  
DAVID R. RADTKE (P47016)  
Attorneys for Class Representatives  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034-8460  
(248) 354-9650

Dated: November 21, 2005

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KLIMIST, McKNIGHT, SALE, McCLOW & CANZANO, P.C.  
*Attorneys at Law*  
400 GALLERIA OFFICENTRE • SUITE 117  
SOUTHFIELD, MI 48034-8460  
TELEPHONE (248) 354-9650  
FAX (248) 354-9656

JS 44 11/99

**CIVIL COVER SHEET** COUNTY IN WHICH THIS ACTION AROSE: Wayne

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**I. (a) PLAINTIFFS**

Gerald Hawkins, Salvatore Ciatti and Gerald Jakubik, on behalf of themselves and a similarly situated class,

(b) County of Residence of First Listed Wayne

(c) Attorney's (Firm Name, Address, and Telephone Number)

David R. Radtke (P47016) 248-354-96540  
Klimist, McKnight, Sale, McClow & Canzano  
400 Galleria Office Centre, Suite 117, Southfield, MI 48034

**DEFENDANTS**

Howden Buffalo, Inc.

County of Residence of First Listed Wayne

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item 11)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                            |   |                            |
|---|----------------------------|---|----------------------------|
| PLA                                     | DEF                        | PLA   | DEF                        |
| <input type="checkbox"/> 1              | <input type="checkbox"/> 1 | <input type="checkbox"/> 4                                | <input type="checkbox"/> 4 |
| Citizen of This State                   |                            | Incorporated or Principal Place of Business in This State |                            |
| <input type="checkbox"/> 2              | <input type="checkbox"/> 2 | <input type="checkbox"/> 5                                | <input type="checkbox"/> 5 |
| Citizen of Another                      |                            | Incorporated and Principal of Business in Another State   |                            |
| <input type="checkbox"/> 3              | <input type="checkbox"/> 3 | <input type="checkbox"/> 6                                | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country |                            | Foreign Nation  |                            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1385ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com mod ities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multi district Litigation  
☐ 7 Appeal to District Judge from Magistrate

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Action for retiree health care benefits. 29 U.S.C. §185, 29 U.S.C. 1132

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$DEMAND

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) instructions:** IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/21/05

*[Signature]*



PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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